TEXAS AND NEW MEXICO.

SPEECH

OF

HON. WILLIAM DUER, OF NEW YORK,

IN THE HOUSE OF REPRESENTATIVES, THURSDAY, AUGUST 15, 1850,

On the President's Message of August 6, 1850, concerning Texas and New Mexico.

The House being in Committee of the Whole on the state of the Union, (Mr. BURT, of South Carolina, in the Chair,) and having under consideration the Civil and Diplomatic Appropriation Bill—

Mr. DUER said:

Mr. CHAIRMAN: I rise for the purpose of making some remarks upon the message of the President relating to the boundaries of Texas, and principally in answer to objections that have been made to that paper. I have regarded that message as well-timed, impregnable in its positions, and wise and statesmanlike in its counsels. It was no sooner read at the Clerk's desk, than it was vehemently assailed and violently denounced. But it is not easy to answer denunciations; and I have waited, with some curiosity, until I could learn upon what foundation in reason these attacks were founded. I should have waited longer if I had not feared, since the debate is so soon to be closed, that I might fail to get the floor altogether. I should have been pleased to hear several gentlemen, who I understand are expected to address the committee, and among others, sir, yourself, who I believe intimated an intention to do so. I was so unfortunate, too, as to hear but a small portion of the remarks of the gentleman from Georgia, [Mr. STEPHENS,] who first addressed the committee; and as those remarks have not yet been reported, I have been obliged to rely, principally, for my knowledge of them, upon a brief and probably imperfect abstract, that was printed in the Republic. For these reasons, together with the heat of the weather, and the late period of the session, my remarks will want that degree of completeness which, under other circumstances, I might have been able to give them; and I feel sensible that what I may say on so important a question, will scarce be worthy of the attention of the committee. Nevertheless, I have thought it proper, so far as I have not been anticipated by other gentlemen, to attempt some answer to arguments that have been made on this floor.

In the first place, permit me to state briefly what I understand to be the positions taken by the President with respect to his powers and duties as the Executive branch of the Government, and the facts upon which those positions are founded. This Government first conquered by its arms, and afterwards acquired by cession from Mexico, a district of country which under the Mexican Government was known by the name of New Mexico. This country was in the possession of Mexico, since Mexico has been an independent State, until its conquest by the United States; and since its conquest it has been possessed without interruption by this Government. There was never any possession adverse to Mexico before the conquest, and there never has been any possession adverse to the United States since. By one of the articles of the treaty, it is stipulated that the Mexicans, in the territory thus acquired, who shall elect to become American citizens, shall in due time be admitted into the Union, and in the mean time shall be protected in their liberty, property, and the free exercise of their religion. Texas, however, claims that the greater part of New Mexico, being that portion lying east of the Rio Grande, belongs to her; and it is well known that that State has it in contemplation to subject the people living there to her jurisdiction by force. Under such circumstances the President declares the opinion, that he has the power, and that it is his duty, to employ the military power of the nation to protect the inhabitants of that portion of the ceded territory claimed by Texas in the rights guarantied to them by the treaty; and that the forcible extension by Texas of her jurisdiction over them would be an infringement of the rights so secured. It was proper, it was just as respects Texas, it was his duty as respects Congress, that the President holding such opinions, should declare them. Texas might well complain, if without previous warning, she found her citizens brought into collision with the army of the United States. Congress, that has power to settle the question by providing for its judicial determination, or by ceding the territory to Texas, or by taking measures for an amicable adjustment by consent of the parties—Congress might well complain, should so unfortunate an event occur, that the President had not communicated to them information so important, and which, it would naturally be supposed, would have caused the prompt adoption of proper measures to avert such consequences. In the frankness of the President I see nothing to censure. If he err, he puts it in the power of Congress to correct whatever evil might otherwise follow such error. But I do not think he has erred; he has assigned the reasons for his opinions, and nothing that I have heard here has shaken my confidence in them.

The gentleman from Virginia, [Mr. SEDDON,] who addressed the committee the day before yesterday, thinks that the resistance of a State to any act of the General Government, does of itself determine the question that the act so resisted is not warranted by the Constitution. He lays down the broad and startling proposition, that this Government has no power to employ force against the force of a State; or, in other words, if the execution of an act of Congress, or of a treaty made

in pursuance of the Constitution, be resisted by persons acting under the authority of a State, there is no power in this Government to enforce the laws against such resistance. I will repeat the proposition; if I do not state his position correctly, I hope the gentleman will correct me.

Mr. SEDDON. The gentleman's statement is a little too broad. I did not speak of acts of Congress passed in pursuance of the Constitution. But I hold that a sovereign State has the right to determine for herself whether an act of Congress be or be not in pursuance of the Constitution; and that if she determine an act to be null and void and resist its execution, this Government has no power to employ force against her.

Mr. DUER. Just so. And in this particular case to which the gentleman applies his remarks; if Texas should authorize a body of armed men to march into New Mexico, and subjugate the country, no act of Congress, and no treaty opposed to her action, would be of any validity, and there would be no power in the Government to enforce them. When a State authorizes resistance to a law of the Union, the act implies, according to the gentleman—or I have wholly misapprehended him—an adjudication that such law is void; if not, the defect in form can easily be supplied. Now, there is a right and a wrong, independent of the judgment of men. Such law may be really constitutional, notwithstanding an opinion to the contrary of a State Legislature, or a State convention. I do not deny that an unconstitutional act of Congress may be rightfully resisted; but I deny that a constitutional act may be resisted because any State may choose to pronounce it otherwise. And here is the precise difference between the gentleman and myself.

The gentleman challenges the production of any authority in the Constitution for the employment of force against a State. I think that I can find such authority, not, indeed, in so many words, but as clearly following from the powers granted as if expressed in terms.

In the first place, there is the power to pass laws. The President and the Senate may make treaties, which are declared to be the supreme law of the land. So Congress, in certain enumerated cases, are authorized to make laws, which are declared to be equally supreme. What is this power? Let us take for example the first one, the power to collect duties, taxes, and imposts. Now, this is not a power to recommend the States to permit taxes to be collected within their borders, but a perfect and unqualified power to collect. So with all the other powers. Next, I find that the executive power is vested in the President of the United States, who is made commander-in-chief of the army and navy of the United States, and of the militia when called into the service of the United States, and required to take care that the laws be faithfully executed; and provision is further made for calling forth the militia to execute the laws of the Union. Lastly, the judicial power, which is declared to extend to all cases arising under the Constitution, the laws of the United States, and treaties made under their authority, is vested in a Supreme Court and such inferior courts as Congress may establish. Now, without going further, since all these powers, the power to make laws, the power to execute them, and the power to interpret them, are perfect, absolute, and unconditional; if there be a dispensing power—a power in the States to repeal this supreme law, or to determine its true meaning, or to prohibit its execution—it must be found in the Constitution itself. An exception destructive of a grant cannot be inferred from the grant itself. But from the beginning to the end of the Constitution, there is not a sentence, there is not a phrase, upon which such a theory can be founded. The gentleman does not pretend to find anything of the sort there. This whole doctrine is founded upon abstract reasoning about the nature of sovereignty and the character of compacts between sovereign States. The States, it is said, were sovereign before the Constitution was formed; and notwithstanding they have parted with a portion of their sovereignty, it is affirmed to continue unimpaired. It might as well be contended that a grantor could revoke his grant because he owned the land before he made the deed. To learn what this Government is, I look into the Constitution, and not out of it. That instrument makes no distinction between resistance to the law, under authority of a State, and any other sort of resistance, and therefore I can make none.

But to remove all doubt, to prevent, apparently, the possibility of cavil, the framers of the Constitution have not stopped here. After declaring that the Constitution, and the laws and treaties made in pursuance thereof, shall be the supreme law of the land, the Constitution provides, that "the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding." Thus it appears that not only an ordinary act of a State Legislature, but that the act of the people of a State, in their sovereign capacity, even when engaged in their most solemn duty, that of framing their fundamental law, is utterly null and void when in collision with laws of the United States made in pursuance of the Constitution. The Constitution makes such State acts void. The gentleman from Virginia attributes to them such efficacy as to paralyze this Government. His argument is not founded on a defect of power in this or that branch of the Government, but in all the branches combined. The Constitution makes the acts of a State null and void when contrary to the laws of the United States, made in pursuance of the Constitution. The gentleman from Virginia makes the laws of the United States null and void when contrary to the act of a State. The Constitution vests the judicial power in the courts of the United States, and declares that the judges in every State shall be bound by the Constitution, and laws of the United States made in pursuance thereof, "anything in the constitution or laws of any State to the contrary notwithstanding." The gentleman from Virginia vests the judicial power in the Legislatures or State Conventions of the several States, and declares that the judges ought to be bound thereby, notwithstanding anything to the contrary in the Constitution or laws of the United States. Instead of the State law falling before the Constitution of the United States, it is the Constitution that falls before the State law. And there are thirty of these arbiters, each judging in the last resort! So that an act of Congress may be valid in one State, void in another, and partly valid and partly void in a third. And all these clashing

decisions the courts of the United States are bound to obey!

I do not know that it is possible to render the fallacy of the gentleman's position more obvious than by its bare statement. I will, however, suppose a case. I will suppose that an individual has been indicted for resisting the execution of a law of the United States, whether for treason or for some inferior offence, and, if he please, the gentleman from Virginia may be his counsel. Now, if the gentleman, as counsel, should set up that the act of Congress so resisted was an unconstitutional act, that, I admit, would be a good defence. But suppose he should say, "I do not submit to the court the question whether this law be unconstitutional or otherwise. The defence is, that the act for which the prisoner is indicted was done under the authority of the State of Virginia, and that she has adjudged the law resisted to be null and void. I plead, in bar, the judgment of a court of paramount jurisdiction. You, as judge, have no business to look into the Constitution—Virginia has decided."

Mr. SEDDON. The gentleman will add that the action of the State was by the people in their sovereign capacity, represented in a State convention.

Mr. DUER. Very well. The form is wholly immaterial. Let it be an act of the people in their sovereign capacity, incorporated, if you please, into their State constitution. What would the judge say? "Why, sir, I am here to interpret the law, and I believe this act of Congress to be in pursuance of the Constitution. I read in the Constitution of the United States, which I have sworn to support, that I am to be bound by such an act, notwithstanding anything to the contrary in the constitution or laws of a State. But you would make the State law supreme. Has Virginia also annulled the oath that I have taken to support the Constitution of the United States?"

Mr. SEDDON. That very clause in the Constitution on which you rest to make it supreme over the State constitutions and laws, what is it but a grant, deriving its whole validity and obligation on the citizens of each State, from its adoption by the people of that State in convention assembled? And has not the same sovereign the right to modify or abrogate it?

Mr. DUER. The revolutionary power. If southern gentlemen come to that, I agree with them. I never would surrender for myself, or for the State of which I am a citizen, the right of resistance to tyrannical laws. But in such case I would abandon sophisms and lay technicalities aside. I would not seek to undermine the Constitution, but to overthrow it. I would call upon the people to rise against their oppressors as their fathers rose.

Mr. SEDDON. And so would I, if it were a case of oppression under the Constitution. That is a right of individuals and not merely of States; but if the gentleman will pardon me, the right which I claim is a State right, the right of an aggregate political community, not the right of revolution.

Mr. DUER. Yes; I understand. I think that I have correctly stated the position of the gentleman, and I have endeavored to answer it out of the Constitution itself; that is enough, so long as the Constitution remains the supreme law of the land. But I do not propose to pursue this subject further. I do not hope to recommend my opinions to the favor of the gentleman, and he can never make me a convert to his. I fear I am one of that majority to whom the gentleman alluded rather disdainfully in his opening remarks, and upon whom he seemed to think that anything like a sound constitutional argument would be thrown away. But I assure the gentleman, with entire respect, that no views which I and others may entertain upon this subject can appear more preposterous to him than his to us. And I thought the gentleman might have avoided this departure from his usual courtesy, considering that those who differ from him on this subject are equally honest in their opinions, and however inferior in capacity, have a weight of authority in their favor, as well as the uniform practice of the Government in all its departments.

These are Virginia doctrines—I respect Virginia. She has given birth to men whose fame is throughout the world, and who have stamped the impress of their minds upon the Government of a nation, which, if our madness or folly do not destroy it, will in another generation be the greatest upon earth. Such men were Washington and Marshall and Madison. But Virginia has produced other men, whose reputation for the most part is merely provincial, and who have left no monuments of their greatness, but who have, nevertheless, to no inconsiderable extent, affected public opinion in Virginia, and, through Virginia, in other southern States; men acute and ingenious, but logicians, I might say grammarians, rather than statesmen. These are the fathers of the doctrines of secession, or scission, of nullification, of State interposition, or State veto, and I know not how many theories besides, or how many technical terms to describe them. But I know if those doctrines should ever prevail, that there would be nothing more worthless or contemptible than what is called the Constitution of the United States. The Union could not last a year, and would not deserve to last a day. Once adopt the theory, which is the theory of the Constitution, and which I will state in the words of the Constitution itself, that the judicial power (the power, that is, of judging, of determining what the law is) is vested in one Supreme Court and such inferior courts as Congress may establish, and that this power extends to all cases arising under the Constitution and laws and treaties of the United States—and everything is clear; we have a beautiful and harmonious system. Reject it, and all is chaos.

The gentleman from Virginia has argued in support of his views with that ability which characterizes all his efforts. But after all it is but the old doctrine of nullification, with, it is true, some additions. The nullifiers of 1832, if I remember correctly, contended for the right of State interposition only in the case of "gross, palpable, and dangerous" violations of the Constitution. The gentleman from Virginia abandons these qualifications, and makes nullification not an extraordinary act, but a part of the ordinary system of Government.

I come now to notice some remarks of the gentleman from Georgia, who first addressed the committee, [Mr. STEPHENS.] That gentleman is reported to have said that the President has no power to employ military force, except in the case of re-

sistance to the execution of judicial process. Now, I know not how better to answer this than by reading from the act itself. The act of 1795 authorizes the President to employ the militia, (and the act of 1807 extends this power to the army and navy,) "Whenever the laws of the United States 'shall be opposed, or the execution thereof ob-'structed in any State," (and by the act of 1807, in 'any territory,)' "by combinations too powerful to 'be suppressed by the ordinary course of judicial 'proceedings, or by the powers vested in the mar-'shals by this act."

The power is general. It is not said, when the execution of process is obstructed, but when the execution of the laws is obstructed. The reference to judicial proceedings and the marshals, is only to measure the extent of the force by which the laws are resisted. If resistance to process only were contemplated, there would have been no necessity to add the words, "or by the powers vested in the marshals by this act;" the words already used were sufficient to cover such a case. The ninth section of the act vests in the marshals and their deputies "the same powers in executing the laws of the United States" (not process merely) "that are possessed by sheriffs and their deputies in the several States." This grant of power, moreover, was not intended to apply to the execution of process at all; because, years before, in the judiciary act of 1789, it was provided that it should be the duty of the marshal of every district "to execute throughout the district all lawful precepts directed to him," and that he should have power to "command all necessary assistance in the execution of his duty." Here, then, new and extensive powers are conferred, unconnected with the execution of process. Can it be doubted that a sheriff may, of his own authority, interfere to suppress a riot? And what would be the character of an armed force marching into Mexico to obstruct the execution of the law? It would be nothing but a riot, and as such the marshals might interfere to suppress i with all the power they could command.

Mr. CLINGMAN. There are no marshals there.

Mr. DUER. Then certainly they could not overcome the resistance, and the case for the use of military power would sooner occur. What I am showing now is, that the authority of the President to interfere is not confined to the case of resistance to process. The law does not require that marshals must act in the first instance. The reference to them is, as I have said before, only to measure the strength of the combination by which the execution of the laws is obstructed. The words mean no more than that where the civil power is inadequate, military power may be employed.

The gentleman from Georgia, who addressed the committee yesterday, [Mr. TOOMBS,] read some extracts from a message of General Jackson in 1832, to show, that in the case of the difficulties with South Carolina, the President did not think that the act of 1795 conferred the requisite power. I have not had an opportunity to refer to that message, and I do not know what particular defect the President supposed to exist in the act referred to. He speaks, as I understood the gentleman in reading, of some slight modifications being necessary. I can well imagine, in such an emergency, a necessity in various respects for additional legislation. The message of General Jackson related to the act of 1795, which provides for calling forth the militia, and his remarks may have applied to that branch of the public service, and not to the army.* But however that may be, it is worthy of observation, that the Constitution makes a marked distinction between the employment of the militia and the employment of the army and navy for the purpose of executing the laws. The Constitution provides that Congress shall have power "to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions;" but it is nowhere provided that they shall have power to authorize the employment of the army or navy for such purposes. Why this difference? May it not have been because it was supposed that the military power, properly and exclusively belonging to the United States, was applicable to those purposes without special authority of Congress? The Constitution provides that the Executive power shall be vested in the President, and that "he shall take care that the laws be faithfully executed;" and it confers upon him the command of the army and navy. The execution of the laws implies the exercise of force; here the power to execute is given, and the force requisite is also given. A thing is commanded to be done, and the means are given to do it; may not the means be employed for the attainment of the end? Suppose that what the Constitution and the treaty with Mexico together contain were in a single law; suppose that it was provided in such law that the inhabitants of New Mexico should be protected in

*The following is the passage in the message of General Jackson referred to by the gentleman from Georgia:

"It is believed that these" (referring to certain measures before recommended) "would prove adequate unless the military forces of the State of South Carolina, authorized by the act of the Legislature, should be actually imbodied and called out in aid of their proceedings, and of the provisions of the ordinance generally. Even in that case, however, it is believed that no more will be necessary than a few modifications of its terms to adapt the act of 1795 to the present emergency, as by that act the provisions of the law of 1792 were accommodated to the crisis then existing."

The fifth section of the act of March 2d, 1833, commonly called *The Force Bill*, which was passed in pursuance of the President's recommendation, provided that "Whenever the President of the United States shall be officially informed," &c., that "any law or laws of the United States, or the execution thereof, *or of any process from the courts of the United States*, is obstructed by the employment of military 'force, or by any other unlawful means too great to be over-'come by the ordinary course of judicial proceeding, or by 'the power vested in the marshal by existing laws, it shall 'be lawful for him to issue his proclamation," &c., "and if, 'afterwards, any obstruction or opposition is made, promptly 'to employ such means to suppress the same, and cause the 'said laws, *or process*, to be duly executed as are authorized 'and provided" by the acts of 1795 and 1807. This is the only part of the act that relates to the employment of military force. The only substantial differences between it and the act of 1795 consist, first, in the insertion of the words above printed in italics; and secondly, in the omission of a provision in the act of '95, "that the use of the militia so to be called forth may be continued, if necessary, until the expiration of thirty days after the commencement of the then next session of Congress," and the substitution therefor of a provision that the said fifth section shall continue in force until the end of the then next session of Congress, and no longer. If, under the act of 1795, military power can only be used in aid of the execution of process, it could have been used for no other purpose under the *Force Bill*.

But the language of the fifth section, above cited, shows that, by obstruction to the execution of the laws, something more than resistance to the execution of process was intended, since that case is added. Indeed, it seems to have been considered that the defect, if any, in the act of 1795, was not in its providing for no other case than resistance to process, but in its omission to provide specifically for that case.

their liberty, property, and religion; that the President should have power, and that it should be his duty, to see that this law was faithfully executed; and that an armed force was placed at his command; could he not use that force for the purpose designated? If Congress pass a law declaring war with a foreign nation, may not the President use the army to execute that law? If so, why not to execute any other law?

It is not denied that the army may be constitutionally employed to execute domestic laws, as well as to carry on war. The gentleman from Virginia [Mr. SEDDON] denies that it can be employed against a State of the Union; the gentlemen from Georgia [Messrs. STEPHENS and TOOMBS] contend that it cannot be so employed, under the acts of Congress, except in aid of judicial process; but none deny that such employment of the military power of the Union is in accordance with the Constitution. But if the President may not, by vir- of the powers vested in him by the Constitution, employ the army and navy to execute the laws, whence do Congress derive the power to authorize him to do so? All the power given to them is to "raise and support armies," "to provide and maintain a navy," and "to make rules for the government and regulation of the land and naval forces." It seems to have been taken for granted that the force of the nation might be employed to give effect to the will of the nation, and that the powers conferred upon the President rendered any special authorization by Congress unnecessary. These views may be novel, and if so, unsound. It is not intended to deny that Congress may limit and regulate the use of the army for the purposes referred to. My suggestion goes no further than this—that where Congress command a thing to be done requiring, or that may require, the exercise of force, and place an armed force at the disposal of the President, he may, under the power vested in him by the Constitution, use the force they give him to accomplish what they have commanded him to do. But whether this be so or not is not material in the present case, since the requisite powers have been clearly conferred upon the President, as I have endeavored to show, by the acts of 1795 and 1807.

Another objection (if I understand him) of the gentleman from Georgia [Mr. STEPHENS] is, that this treaty is not now the law of the land; that it cannot become the law of the land until Congress shall pass the acts necessary to enforce it.

Mr. STEPHENS. I hold that the obligation of the treaty rests upon the Government of the United States; not on one of its departments only, but upon all—legislative, executive, and judicial, conjointly; and until the law-making power shall define the rights under the treaty, and the Judiciary shall pass upon them, it is not for the Executive to execute it.

Mr. DUER. The Constitution declares that treaties made under the authority of the United States shall be the supreme law of the land; it uses the same language precisely with respect to treaties and acts of Congress, and I can see no difference between the power of the President in one case and in the other. I do not deny that in some cases treaties may require the action of Congress before they can have effect. A treaty may stipulate for what it is beyond the treaty-making power to perform. In such case it is promissory merely, and binds the faith of the Government. But so far as a treaty executes itself, and requires the action of no other department of the Government to give it effect, it is as binding as an act of Congress. The gentleman asks, if a treaty promise to pay money, can the President put his hands into the Treasury and take it out? No, certainly not; because the power to appropriate money is exclusively in Congress. But this is not such a case; there is no defect here in the treaty-making power. We may certainly regulate by treaty the acquisition of that which we acquire by treaty. If we may by treaty acquire sovereignty over people, we may, by the same treaty, place limitations on that sovereignty; we may stipulate to leave them their property or their religion. To give full effect to what we have promised to these people, I do not dispute that legislation is necessary. We have promised that they shall come into the Union, and that will require a law. Legislation, too, is requisite to secure to them that protection which, in the mean time, has been guarantied. But when the treaty says that they "shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion," these words have certainly an operation *per se*; they would be operative in an act of Congress; and so far as they are operative, an act of Congress, reënacting them, would give them no additional force.

Mr. WOODWARD here made some remarks, which were not heard by the reporter.

Mr. DUER. I am coming to that—I will come to it now. How does the extension of the laws of Texas over the ceded territory impair the rights guarantied to the inhabitants by the treaty? "Are the laws of Texas," says the gentleman from Georgia, [Mr. TOOMBS,] "inconsistent with liberty?" I answer, No—not with the liberty of Texans; but the extension of those laws over persons not subject to them, is inconsistent with the liberties of those over whom jurisdiction is thus usurped. "But," says the gentleman from South Carolina, "this involves a conclusion that Texas has no just claim to the territory in question." And this I understand to be one of the principal objections urged against the position taken by the President. If, it is said, this territory rightfully belong to Texas, the extension of the laws of Texas over the persons living there is no violation of their liberty, and no infringement, consequently of the guarantees of the treaty. When, therefore, it is urged, the President determines that it is his duty to protect these persons against a forcible subjection to Texan laws, he, in fact, passes on the claim of Texas, and decides that claim not to be good. This certainly was not the intention of the President; he expresses no opinion on the question of the title of Texas, and disclaims all authority to examine and pass upon it; neither do I think that his decision involves any such consequence. The President does not go beyond the fact of possession. The possession of the territory is in the United States. Is he not bound to maintain that possession? Has he any authority to abandon it? Whether the right or claim of Texas be good or otherwise, she certainly has not that which is requisite, in law, to make a *perfect title*. I think Blackstone lays it down that to constitute a perfect title three things

are required: possession, the right of possession, and the right of property. Now Texas certainly has not possession; neither has she the right of possession; she has not been disseized by the United States, nor by any one under whom the United States holds. She never had possession. Her claim, then, good or bad, is reduced to the *jus proprietatis*, or it is, as lawyers say, *jus merum*, a mere right. Such rights confer no authority to disturb the possession of one who holds adversely; they cannot be enforced by Executive power, and are without efficacy until judicially recognized and declared. If the President should sit in judgment on the claim of Texas, and, determining it to be well-founded, abandon to her territory ceded to and possessed by the United States, he would be guilty of what he is unjustly accused—the usurpation of judicial power. May not the President of the United States maintain the possession of the public property? Is it not his duty to maintain possession of the ships of war, forts, arsenals, and navy-yards, of the United States? If officers of the United States should forcibly dispossess a man of his property, it may be that the President might order that possession to be restored; but could he listen to and adjudicate upon a mere claim of property? Can it make any difference whether the claim is to one species of property or another? Or whether, instead of a proprietary right, it is a claim of jurisdiction, or sovereignty? If the State of Maryland should attempt to exercise jurisdiction over the District of Columbia, on the ground that the act of cession was void, or that the title of the United States had become forfeited, could the President entertain and determine the validity of such claim? It is with surprise that I have heard from the gentleman from Georgia [Mr. TOOMBS] the declaration, that the *status quo*, or, in other words, the fact of possession, can make no difference; it seems to me, so far as the executive power is concerned, to make all the difference in the world.

But it is said that the Territory of New Mexico is not in the possession of the United States. I do not know that it is claimed to be in the possession of Texas; and in this view of the case the possession, I suppose, must be considered as vacant. What are the facts? The territory was conquered by the arms of the United States; it passed immediately from the jurisdiction of Mexico to the jurisdiction of the United States, and never has been for a moment under any other jurisdiction. It was ceded to the United States by the treaty of peace; not, indeed, in so many words—neither was California ceded in words—but the boundaries were so fixed as to include it, and there is no title either in this Government, or in Texas, except by that cession. When conquered, possession was taken in the name of the United States, and not in the name of Texas; and the Commanding General promised to the inhabitants on both sides of the Rio Grande, protection against all persons whatsoever. Now, what Mr. Polk, when President, may have said, or what his Secretary of War may have said, subsequently, and after the treaty of peace, cannot affect the character of the conquest; it is no part of the *res gesta*. It may affect the subsequent possession so far as that possession depends upon military occupation, but it cannot relate back to the original taking. But I do not, for myself, place the possession of the United States, since the treaty of peace, upon the military occupation of the Territory. I regard the actual possession as residing in the people dwelling there, who are, in fact, a separately organized community, living under their own laws. The question, then, is, under whom do these people hold—to whom do they render fealty—whose jurisdiction do they acknowledge? It is indisputable that they have always held adversely to Texas, and denied her authority; and it is equally indisputable that they have constantly, since the treaty of peace, acknowledged the authority of the United States, and exercised the power of self-government that necessity has devolved upon them, in subordination to that authority. They framed a territorial government and asked Congress to adopt it. They have since formed a State government, and prayed to be admitted as a State into the Union. It is impossible that there can be a more explicit recognition of the jurisdiction of this Government. Their possession is our possession; just as the possession of a tenant is the possession of his landlord. It is precisely like the possession for several years of Oregon; and it is inseparable in principle from the possession of all the Territories of the United States, whether organized or unorganized.

It is alleged that the President, to be consistent, should seek to dispossess the people of Texas of that part of the ceded territory lying south of New Mexico. What I have already said is an answer to this objection. The question of title may be the same; but the difference that possession makes, is, so far as the Executive power is concerned, an essential and controlling fact. If gentlemen would read with attention what they so severely criticise, they would find the limits of Executive authority, and the line that separates the powers of the different departments of the Government, very clearly and accurately defined in the message itself:

"The Executive Government of the United States has no power or authority to determine what was the true line of boundary between Mexico and the United States before the treaty of Guadalupe Hidalgo; nor has it any such power now, since the question has become a question between the State of Texas and the United States. So far as this boundary is doubtful, that doubt can only be removed by some act of Congress, to which the assent of the State of Texas may be necessary, or by some appropriate mode of legal adjudication; but, in the mean time, if disturbances or collisions arise, or should be threatened, it is absolutely incumbent on the Executive Government, however painful the duty, to take care that the laws are faithfully maintained. And he can regard only the actual state of things as it existed at the date of the treaty, and is bound to protect all inhabitants who were then established and who now remain north and east of the line of demarkation, in the full enjoyment of their liberty and property, according to the provisions of the ninth article of the treaty."

I see here nothing to add, and there is nothing that I would take away.

The gentleman from Georgia [Mr. TOOMBS] suggests another ground upon which the decision of the President involves a denial of the rights of Texas. He says that the rights guarantied by the ninth article of the treaty, are reserved only to the persons described in the eighth article; that is, to Mexicans established in territories "*previously belonging to Mexico;*" and that therefore, the President virtually maintains that New Mexico, east of the Rio Grande, belonged to Mexico before the treaty. Well, who pretends otherwise? Does not every man—every man out of Texas at least—place the title of Texas upon the acts, engage-

ments, and admissions of this Government? Is not her right, if she have any, through this Government, and under the cession? Does not the gentleman from Georgia think so himself?

Mr. TOOMBS. I do myself; but the President has no right to determine the question judicially.

Mr. DUER. He does not determine judicially. His determination binds no one—affects no right. It would not even protect those who should act under his authority. Every executive officer, in one sense, must interpret the law; he must read and see what it is that he is required to do; but this is not a judicial interpretation.

Suppose the President had expressed an opinion that New Mexico did not belong to Mexico before the treaty: would that have affected favorably the claim of Texas? It seems to me quite otherwise. The only plausible ground of her claim is, that this Government having acquired this territory from Mexico is estopped from disputing her title. Destroy this, and there is not a pretext left. If there has been no cession, there is no estoppel.

I will now say a few words with respect to the recommendations of the President. The gentleman from Pennsylvania, who spoke yesterday, [Mr. STEVENS,] asked what reason there was why any man, and especially any northern man, should vote to pay this ten millions of dollars to Texas? I will give him some reasons why I will give such a vote. In the first place, I will vote the ten millions to settle a disputed question, of which the ultimate decision is doubtful. I will vote it to secure against all hazards the people—the actual inhabitants of New Mexico, a homogeneous people, geographically bound together—against a dismemberment which shall transfer the greater part of them to the rule of a people, differing from them in language, religion, laws, and customs, and of whom their knowledge and associations are wholly derived from a state of war. To do this is but common justice—justice that in this case is enforced by the spirit, if not the letter, of a treaty by which, against their wishes, these people have been transferred to our jurisdiction. When I say the question is doubtful, I do not refer to my opinion, or the opinions of others, but to its determination. The law is that, some one says, which the judges shall determine to be so. The gentleman from Pennsylvania has no doubt; that would be very material if the decision rested with him. But what influence will his opinion or my opinion exercise upon the result? The little experience I have had at the bar has shown me, that when lawyers differ very much, there is doubt what the decision of the court may be. I have also learned that a lawyer, whose ingenuity has been stimulated by a fee to take a one-sided view of a case, is not a safe judge of the weight of reasons that may lie on the other side. I would not, therefore, advise a client to rely confidently upon my opinion, where it was opposed to the opinions of those, of equal or superior knowledge and ability. Unhappily too many of us come here rather as advocates than judges; to defend the rights of a section instead of administering justice to the whole. How many are in a frame of mind to regard this legal question impartially? How many endeavor to do so? What do we see? A division in opinion, almost sectional, between gentlemen equal in talents, in learning, and in experience; and I will add, I doubt not, equally honest. And here is another reason to relax the confidence that what is clear to us must be clear to others. Since the division of opinion on this question is sectional, may not there be a similar division in the tribunal that is to decide it? A majority of those judges are southern men. I mean not to cast upon them the slightest imputation. When I cease to have confidence in the judges of the Supreme Court, I shall cease to have confidence in this Government. I simply refer to what every one of much observation knows, that five-sixths of the opinions of sensible men, and ninety-nine hundredths of those who are not sensible (if they have so many) are derived from those with whom they live, with whom they habitually associate. These are the sources whence we derive most of our opinions in religion, in politics, in morals, and in law; and of all opinions it is these that it is the hardest to shake. Though they might be the purest men that ever lived, I should not care to argue the question of the real presence before a bench of Catholic bishops. Let the gentleman from Pennsylvania remember, that the true question is not whether Texas has no title to any part of this territory, but whether the judges of the Supreme Court will decide so.

There is another reason why I will vote the ten millions. I will simply allude to it—it has been argued by others. Without any very particular examination of the question, I will say that Texas, or rather her creditors, has at least a strong equitable claim upon this Government for the payment of her debts. To a certain extent her sovereignty is merged; it is merged as respects foreign nations, who can no longer enforce their claims, or those of their citizens, against her by war; it is merged as respects her power to collect a revenue by duties on imports, which revenues were pledged to her creditors. I know that we northern Whigs used to say that to annex Texas was to annex her war, her slavery, and her debt. I believe that the prophecy will be fully accomplished.

I have another reason. I will vote these ten millions for peace. I will vote them for the sake of harmony—for the sake of the Union. I will vote them to avert the danger of collision between the arms of Texas and the arms of the United States, in a controversy where the sympathies of half the States of the Union would be on one side, and the other half on the other. This, the gentleman from Pennsylvania [Mr. STEVENS] calls cowardice. He may give it that name if he please; it arises from a fear, an apprehension of public calamities. It is not personal fear. If that, of which that gentleman boasts be courage, there are two sorts: the courage that makes us insensible to dangers to our country, and the courage that enables us to brave dangers to ourselves; and sometimes those who have most of the one sort, have no superabundance of the other. Sir, I know no more dangerous sophism than that which dignifies the selfish rashness that, for the sake of place or ambition, would involve a nation in war or other great calamity, with the name of courage. It is much more akin to cowardice, and has, usually, its origin in the same baseness of spirit. Shall we "buy peace?" says the gentleman. Yes, I will buy peace; I will give ten millions of dollars for it—Texas is not an enemy; and if she were an enemy, the powerful may, without ignominy, buy peace from the feeble.

How would the gentleman from Pennsylvania settle this question? The temper of his speech

would seem to indicate a preference for civil war. That remedy, however, failing, he is willing to accept what might probably lead to it, and what, next to war, engenders malignant passions—a law suit. He would admit New Mexico as a State, and leave the question of boundary to be determined by a suit in the Supreme Court. Now, I have been in favor of the admission of New Mexico as a State; that was a part of the plan of the late President, and I still entertain the opinion I have heretofore expressed, that of all the plans that have been proposed, that is the wisest and the best. I only wish the prospect of its adoption were more flattering, while yet, under actual circumstance, I shall endeavor to procure the best settlement in my power, and to that end shall shape my course. I have never, however, contemplated the admission of New Mexico prior to the settlement of her boundaries. I concur in the view taken by the President in his message, that "no government can be established for New Mexico, either State or territorial, until it shall be first ascertained what New Mexico is, and what are her limits and boundaries;" and this, indeed, is identical with an opinion which I expressed on the floor of the House several months ago.* The gentleman from Pennsylvania combats this position, which he regards as equivalent to a declaration that the Constitution prohibits the admission of a State with unsettled boundaries. This appears to me a very forced construction. I only understand the President as employing a strong, and not unusual expression, to indicate the impropriety of the course referred to. States have heretofore been admitted, says the gentleman, with unsettled boundaries. It makes some difference, however, whether the controversy relates to a narrow strip, or insignificant portion of a State, or whether it embraces the whole. Here the claim of Texas is to about three fourths of the Territory and five sixths of the population of New Mexico. The title of New Mexico to come in as a State, depends wholly upon the settlement of this controversy in her favor. In every view I can take, it seems to me monstrous that Congress may bring a State into the Union, that the Supreme Court by a judgment may put out!

My support of the measure recommended by the President is no new thing, and has not its birth since the change that has taken place in the executive branch of the Government. I indicated my approval of it in a letter written and published so long ago as December or the beginning of January last, and afterwards declared my preference for it in the House, in the month of April following. It is no ground of complaint against the gentleman from Pennsylvania, [Mr. STEVENS,] and requires no apology from him, that he does not see fit to support this or any other measure of the present Administration. I trust that every gentleman here may always preserve, in this respect, a proper independence. But there is reason to complain that the gentleman has, in assailing the motives of the President, passed the bounds of legitimate opposition. The gentleman denies that the President, under the actual facts of the case, has recommended the settlement of this question by the payment of an indemnity to Texas; and to prove that such recommendation is contingent only, he read this passage from the message:

"If the claim of title on the part of Texas *appear to Congress to be well founded*, in whole or in part, it is in the competency of Congress to offer her an indemnity for the surrender of that claim."

Was it because he thought it irrelevant that the gentleman omitted the very next sentence?

"*In a case like this*, surrounded as it is by many cogent considerations, all calling for amicable adjustment and immediate settlement, the Government of the United States *would be justified, in my opinion, in allowing an indemnity to Texas*, not unreasonable and extravagant, but fair, liberal, and awarded in a just spirit of accommodation."

If the incredulity of the gentleman is serious, I am bound to yield to it entire respect; though I suppose it to be quite peculiar, and shared, probably, by no other member of the House. But perhaps his disbelief is only affected, as a rhetorical art to give greater effect to his invective. Be this as it may, when the gentleman says that to impute to the President what every one but himself knows him to have said, is an aspersion, a calumny, he indirectly charges him with conduct that is infamous and disgraceful. That sort of attack might better be left to open opponents, and is only the more offensive, because made under the mask of friendship.

I intended to have made a few remarks upon another matter connected with this question, but I see that I shall not have time. I will only say, in conclusion, that if this measure of peace shall fail; a measure that, however it may be distorted by sectional demagogues, will, in the eyes of reasonable men, appear an equitable arrangement of a difficult and dangerous question; if, in consequence a collision shall occur, blood be shed, and civil war ensue, a deep responsibility will rest on those who shall have obstructed, when practicable, a peaceful settlement;—a responsibility in which I mean to have no part or lot whatsoever. Gentlemen may deride the idea of such occurrences. Very well; I am no prophet of events; they may be wiser than I am. I only beg them to remember that they take upon themselves the responsibility of the future; and I, for one, shall not forget to hold them to that responsibility.

For myself, I shall take care, so far as it may depend upon me, to render to Texas exact and entire justice. If she desire that her claim shall be judicially tested, that is her constitutional right, and I will vote for all laws necessary to open to her the courts. I will go further, and propose to her a settlement equitable and even liberal. If then, rejecting every peaceful arbitrament, she shall be mad enough to appeal to the sword, and raise the standard of treason, upon her head will rest the consequences. What those consequences will be, if any doubt, the event will assuredly teach them that he upon whom the Constitution has imposed the obligation to "preserve, protect, and defend the Constitution of the United States," is not more moderate and conciliatory in his counsels than firm in the discharge of his duty.

*In a speech delivered in the House of Representatives, April 10, 1850, Mr. DOER said, "Such a bill," a bill that is for the admission of New Mexico, "should contain a provision, as matter of preliminary arrangement, for the extinguishment upon just terms and with the assent of Texas, of her claim to a portion of the Territory. A provision indeed of that character appears to be necessary, whether we adopt the State or the Territorial plan, since in either case we ought to know what it is for which we are legislating."

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